

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3339 OF 2018

Arun Udaylal Yadav

..Petitioner

V/s.

The State of Maharashtra & Ors.

..Respondents

Mr.S.G. Rajput for the Petitioner.

Mr.F.R. Shaikh, APP for the Respondent-State.

Ms.Sneha P. Baria for Respondent Nos.2 to 4.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 24th OCTOBER 2018

P.C.

1. Heard the learned counsel for the petitioner, learned APP and the learned counsel for the respondent No.2 to 4.

2. The petition is filed for quashing the proceedings of the Special POCSO Case No. 145 of 2018 pending on the file of Special Sessions Court at Mumbai, said case arises out of the FIR bearing C.R. No.108 of 2017 on the file of POCSO Special Court at Mumbai registered at the instance of the respondent No.2 by the D.B. Marg Police Station, Mumbai for offences punishable under Sections

354(D)(2), 506 and Section 12 of the POCSO Act.

3. Pending trial of the said case, the parties settled their dispute amicably and have approached this Court for quashing the proceedings of the subject criminal case by consent. The respondent No.2 as well as respondent No.3 and 4 have filed common affidavit dated 27.08.2018. In paragraph No.4, they have given no objection to quash the proceedings of the subject criminal case.

4. It is true that the offences under POCSO Act and under section 376 of IPC are of serious nature as they are against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to Paragraph 28 of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065], wherein the Apex Court has held as under :

“28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well.

Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

5. The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an offence against the society. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of such offence and that the Court can accept the settlement and quash the FIR / Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

6. In light of the above observations of the Apex Court we

have perused the FIR as well as charge-sheet the allegations against the petitioner. It is alleged that he has sent objectionable messages through Whatsapp Media and also indulged himself in stalling. After careful perusal of the same we are of the opinion that the same does not disclose 'sexual harassment' as defined under Section 11 of the POCSO Act, which requires a sexual intent. It is only in this contingency, Section 12 is attracted.

7. In the backdrop of the above facts and especially in view of the law laid down by the Apex Court in the case of Narinder Singh (Supra), we find no purpose would be served by keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the criminal proceedings are required to be quashed. However, at the same time, costs need to be saddled on the parties for using the police machinery and judicial mechanism for settling their personal disputes.

8. Accordingly, the proceedings of Special POCSO Case No. 145 of 2018 pending, on the file of Special Sessions Court, Mumbai and arising out of the FIR bearing C.R. No.108 of 2017 on

the file of POCSO Special Court at Mumbai are quashed and set-aside subject to payment of costs of Rs.25,000/- by the Petitioner. The petitioner shall deposit the costs with Yashodhan Charitable Trust, Satara. Details of the account of Yashodhan Charitable Trust, Satara are as follows :-

Account Name	:	Yashodhan Charitable Trust
Bank Name	:	Bank of Maharashtra
Account No.	:	60245873355
IFCS Code	:	MAHB0000305
Branch	:	Powai Naka, Satara
A/c. Type	:	Saving

The said amount be deposited within the period of two weeks from today and the receipt of the same be placed on record.

9. Subject to above, the criminal writ petition stands disposed of.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)